ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate to the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services	**CC Docket No. 92-297**

OPPOSITION IN RESPONSE TO PETITION FOR RECONSIDERATION

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Dated: October 21, 1996

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To: The Commission

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Motorola Satellite Communications, Inc. ("Motorola") respectfully submits its Opposition to Texas Instruments' Petition for Reconsideration of the Commission's First Report and Order in the above-captioned proceeding.[1/] Motorola is an interested party in this rulemaking proceeding. It is licensee in the 1.6 GHz band to provide

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1/ First Report and Order and Fourth Notice of Proposed Rulemaking, FCC 96-311 (rel. July 22, 1996) (61 F.R. 44177 (August 28, 1996) ("First Report and Order" and "Fourth Notice"). Petitions for Reconsideration were submitted by Texas Instruments, Inc. ("TI"), TRW, Inc. and Motorola. These petitions were placed on Public Notice on October 4, 1996 (61 F.R. 51941 (October 4, 1996). Motorola's Opposition is timely-filed in accordance with Section 1.429(f) of the Commission's Rules.

Mobile Satellite Service ("MSS"), as well as the 19/28 GHz bands for its feeder links and system control operations for the IRIDIUM® System.[2/]

I. INTRODUCTION

As Motorola noted in its own Petition for Partial Reconsideration, it generally supports the 28 GHz band plan adopted by the Commission. It recognizes the difficult balance that the Commission has attempted to strike in accommodating the spectrum needs of the MSS, FSS and LMDS industries. Motorola applauds the Commission's efforts to find creative solutions for what has been an exceedingly complex and contentious set of issues.

In particular, Motorola does not oppose the significant constraints imposed on its feeder link operations at 29.1-29.25 GHz caused by the need to share this band with TRW's Odyssey System and the LMDS community. Moreover, Motorola has voiced its support for the Commission's tentative decision to allocate an additional 300 MHz of spectrum to LMDS operations.

Motorola opposes, however, Texas Instruments' attempt at undermining the very LMDS compromise arrangement to which it agreed in 1994.[3/] TI urges the Commission to upset the balance struck over many years of often contentious negotiations between the LMDS, NGSO MSS, and the FSS communities. Contrary to

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[2/] Motorola Satellite Communications, Inc., 10 FCC Rcd 2268 (Int'l Bureau 1995); reconsideration denied, Memorandum Opinion and Order, FCC 96-279 (rel. June 27, 1996).

[3/] See, e.g., First Report and Order at ¶ 98.

TI's claim, there is no ambiguity as to the process that the LMDS community must go through if it is to use the 29.1-29.25 GHz band for subscriber-to-hub communications. It must demonstrate to the satisfaction of both the currently-authorized users of the band and the Commission that subscriber-to-hub communications will not cause harmful interference to essential NGSO MSS feeder link operations. Nor is there any ambiguity as to the status of subscriber-to-hub communications in this band; the Commission has prohibited it by rule and must amend this rule prior to permitting such communications.

Not surprisingly, Texas Instruments has not provided the Commission with any new evidence supporting a change of the Commission's rule. Rather, Texas Instruments merely urges the Commission to commit to a formula and time frame for changing this rule. The Commission has never done this for any private party and it should not set an unfortunate precedent by promising an outcome before any evidence is before it.

II. THE COMMISSION SHOULD REJECT TEXAS INSTRUMENTS' CALL FOR CLARIFICATION OF LMDS OBLIGATIONS TO SHARE THE 29.1-29.25 GHZ BAND

The Commission should reject Texas Instruments' attempt to upset the delicate spectrum compromise reached in this proceeding. As the Commission has repeatedly noted, Motorola and the LMDS community reached one of the few compromises to share the 28 GHz band.

> The only agreement reached with respect to frequency sharing during the Negotiated Rulemaking included Motorola, Cellularvision and Texas Instruments. These

> parties agreed that MSS feeder links and LMDS hub stations and subscriber receivers can operate on the same frequencies subject to certain operating restrictions. The agreement provided that subscriber transceivers would not be permitted to transmit in this shared band. It also permitted the MSS licensee to operate feeder link earth stations in up to eight designated metropolitan statistical areas (MSAs) without further coordination...We use this agreement as the basis for our co-frequency sharing plan between these services.[4/]

At the same time, the Commission recognized that it might be possible to permit LMDS subscriber traffic in the band and invited comments with a "complete technical analysis and any economic or operational consequences of this alternative proposal."[5/] After receiving extensive comments from the LMDS and MSS communities, the Commission concluded that it was not possible to permit subscriber-to-hub operations in the band.[6/] While not foreclosing the possibility of future two-way use of the band by LMDS, the Commission explained that such use would occur only if "the parties in the future agree that LMDS return links can operate here in this band under mutually acceptable sharing criteria with NGSO/MSS licensees and applicants."[7/] Elsewhere in the First Report and Order, the Commission explained that it would only

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4/ Third Notice of Proposed Rulemaking and Supplemental Tentative Decision, 11 FCC Rcd 53, 75-76 (1995) ("Third Notice") (emphasis added); See, also, First Report and Order at ¶ 34 ("For this 150 MHz we based our proposed sharing criteria on an agreement reached by Motorola, CellularVision and Texas Instruments with respect to frequency sharing during the [Negotiated Rulemaking Committee]. This agreement provided that [LMDS] subscriber transceivers would not be permitted to transmit in this shared band.")

5/ Third Notice at 76-77.

6/ See First Report and Order at ¶ 34-37; Fourth Notice at ¶ 98.

7/ Id. at ¶ 37.

change its mind under one circumstance. If the "LMDS proponents [are] able to demonstrate definitively that they can technically operate subscriber-to-hub links on a non-interference basis to the NGSO/MSS feeder links, particularly the satellite constellation, we would revisit the restriction we adopt today."[8/] As a result of this comprehensive record, the Commission adopted a specific rule that prohibits LMDS subscriber-to-hub communications in the 29.1-29.25 GHz band:

> § 101.133(d) LMDS Subscriber Transmissions: LMDS licensees shall not operate transmitters from subscriber locations in the 29.1-29.25 GHz band.[9/]

Texas Instruments, apparently unhappy with its own agreement, is now attempting to create confusion where there is none. The Commission should not respond to TI's request for "clarification" of the process through which it might demonstrate that sharing is possible.[10/] The process is already clear. The LMDS community must convince the NGSO MSS community and the Commission that sharing is possible on a non-interference basis. Motorola will carefully review and respond to any written new evidence that Texas Instruments or others submit to the Commission. However, it is unnecessary for the Commission to mandate any new round of negotiations to achieve such an agreement. If the new evidence proffered by TI or others is sufficiently compelling and not adequately refuted by NGSO MSS interests,

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8/ Id. at ¶ 71.

9/ 47 C.F.R. § 101.133(d).

10/ Texas Instruments Comments at 3-4.

the Commission would conduct a notice and comment rulemaking to modify or delete its specific rule prohibiting subscriber-to-hub transmissions in the band.

Not surprisingly, Texas Instruments is not now before the Commission with a new "complete technical analysis" that would justify Commission reconsideration of new Section 101.133 (d) of its Rules. Rather, in the absence of any new technical evidence or even the glimmer of a solution after years of exhaustive analysis and discussion, Texas Instruments simply urges the Commission to agree in advance to a customized procedure for its benefit. Texas Instruments need only submit new evidence if it seeks to amend the current prohibition on subscriber-to-hub communications. The Commission will carefully review such new evidence; and, if it concludes that the proposal is at all plausible, release it for public comment. However, absent compelling new evidence from the LMDS community, the Commission and interested parties have spent enough time and resources on this matter. It is time to move on.

While Motorola does not now believe sharing is possible with subscriber-to-hub communications in the 28 GHz band, it wholeheartedly supports the Commission's efforts to allocate up to an additional 300 MHz for LMDS use at 31.0-31.3 GHz on a primary protected basis.[11/] This is an equitable solution to the constraints imposed on LMDS operations at 29.1-29.25 GHz, and the vast majority of LMDS commenters agree. Motorola further agrees with Texas Instruments that

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11/ Motorola Reply Comments in the Fourth Notice at 4

acceptance and processing of LMDS application should move forward expeditiously.[12/] Motorola will meet its obligations to limit and identify its feeder link locations as part of its agreement with the LMDS community. This should remove any uncertainty as to the interference that a potential LMDS licensee can expect.[13/] However, Texas Instruments' continued efforts to change the compromise to which it agreed and which formed the basis of the Commission's sharing plan can only create more uncertainty and delay in initiating LMDS services.

TI cannot now seek to retain the benefits of this compromise agreement for the LMDS industry -- as well as the additional spectrum that the Commission is proposing -- while attempting to short circuit through a procedural device the most important restriction to which it agreed in order to secure these benefits. The restrictions on LMDS subscriber-to-hub communications are absolutely essential to the interference-free feeder link operations of the IRIDIUM® System. Motorola could not and would not have supported the Commission's 28 GHz band plan, and its attendant restrictions on any potential risks to NGSO MSS feeder link operations, in the absence of a rule prohibiting LMDS subscriber-to-hub links. At this late date, the Commission should not tolerate TI's attempts at "cherry-picking" the agreement by belatedly disavowing its own obligations.[14/]

12/ Reply Comments of Texas Instruments to the Fourth Notice at 2-4.

13/ See 47 C.F.R. § 101.147(x)(2).

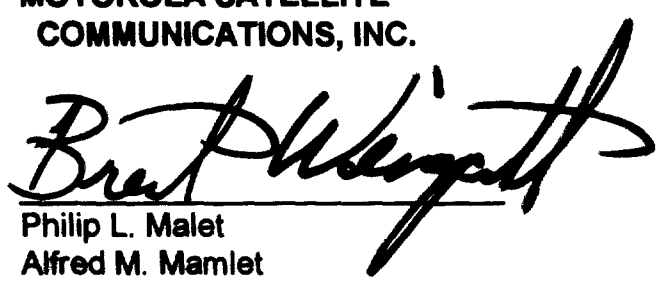
14/ Motorola has long been on record as to the crucial importance of ensuring interference-free use of these feeder links and the mutual obligations that must be accepted by the LMDS industry and the IRIDIUM System to allow for coexistence in the band. See e.g., Joint Reply Comments of Motorola and Iridium, Inc. in response to the Third Notice in this proceeding at 3-4, October 10, 1995.

III. CONCLUSION

The Commission should reject Texas Instruments' attempt to re-open the compromise agreement to which it agreed. If and when the LMDS community can demonstrate the ability to operate subscriber-to-hub links in the 29.1-29.25 GHz band without interfering with NGSO MSS operations, Texas Instruments or others should petition the Commission to change the rules.

Respectfully submitted,

MOTOROLA SATELLITE COMMUNICATIONS, INC.



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CERTIFICATE OF SERVICE

I, Brent H. Weingardt, do hereby certify that a copy of the foregoing **Opposition To Texas Instruments' Petition For Reconsideration** has been sent, via first class mail, postage prepaid, (or as otherwise indicated) on this 21st day of October, 1996 to the following:

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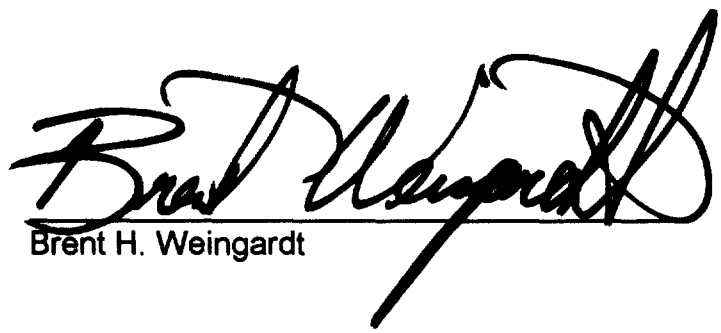

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